

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 477 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI LAXMANBHAI KHANT

Versus

STATE OF GUJARAT

Appearance:

MR PJ YAGNIK for Petitioner

Mr.K.G. Sheth, ADDITIONAL PUBLIC PROSECUTOR
for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 09/12/1999

ORAL JUDGEMENT (Per: Kadri, J.)

1. The appellant, by filing this appeal under
Section 374 of the Code of Criminal Procedure, has
challenged legality and validity of judgment and order
dated May 22, 1992, passed by the learned Additional

Sessions Judge, Godhra, at Panchmahals, in Sessions Case No.227 of 1991, by which, the appellant was convicted for offence under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and fine of Rs.1000, in default, S.I. for three months. The appellant was further convicted and sentenced for offence under Section 201 of the Indian Penal Code to undergo imprisonment for 1.1/2 years and fine of Rs.500, in default. S.I. for one month.

2. The prosecution case be summarized as under. The appellant was married with deceased Maniben prior to one year of the date of the incident, i.e. August 12, 1991. The appellant along with his wife and other family members was residing at Dahyapura, Taluka Santrampur, District Panchmahals. It is alleged that the appellant used to treat deceased Maniben with cruelty. As per the prosecution case, the appellant had illicit relation with the daughter of one Laxman Bhema. Deceased Maniben, because of this illicit relation and because of cruelty meted out to her by the appellant, had gone to her parents house. She had narrated to her parents the ill-treatment meted out to her by the appellant. P.W.14, Bapubhai Motibhai, who is father of deceased Maniben, had taken Maniben to her in-laws house prior to 15 days of the incident. It is alleged that the appellant used to threaten deceased Maniben that he would kill her if she raises any objection against illicit relation of the appellant with the daughter of Laxman Bhema. As per the prosecution case, deceased Maniben had also returned to her parents house due to ill-treatment meted out by the appellant many times. In the night of August 11, 1991, deceased Maniben had prepared dinner and had gone to sleep. The appellant, who was serving in a Nursery, had taken dinner and left his home. Deceased Maniben was not found at the house and, therefore, the appellant himself on August 13, 1991 had gone to Santrampur Police Station and had lodged information that his wife Maniben was missing since last night. The said information was entered in the police-station diary at Entry No.16/91. A search was made for the missing lady, Maniben. Clothes of Maniben were found out near the well of one Mangalbhai Hirabhai Khant. Ultimately, the dead body of deceased Maniben was found out from the said well. PSI, Mr. D.M. Parghi, held inquest of the dead body and the dead body was sent for post-mortem to the Government Hospital at Santrampur. Dr. P.V. Sangda, P.W.1, carried out post-mortem of the dead body on August 13, 1991 between 2 p.m and 4 p.m. The cause of death after post-mortem was found to be asphyxia due to strangulation. PSI, Mr. D.M. Parghi, lodged first information report at Santrampur

police Station for the offences punishable under Section 302 read with Section 201 of the Indian Penal Code against the appellant, which was registered at C.R. No.125/91. The appellant was arrested on August 14, 1991. PSI, Mr. D.M. Parghi, during investigation of the above crime, recorded statements of the prosecution witnesses. After obtaining post-mortem report, charge-sheet came to be filed against the appellant in the Court of learned Judicial Magistrate, First Class, Santrampur, for the offences under Section 302 read with Section 201 of the Indian Penal Code. As offence punishable under Section 302 of the Indian Penal Code is exclusively triable by Court of Sessions, the learned Judicial Magistrate committed the case to the Court of Sessions, at Godhra, at Panchmahals, where it was numbered as Sessions Case No.227 of 1991.

3. Charge Exh. 2 was framed against the appellant for the offences under Section 302 read with Section 201 of the Indian Penal Code. The charge was read over and explained to the appellant. He pleaded not guilty to the charge and claimed to be tried. The prosecution, to bring home the charge against the appellant, examined following witnesses: (1) P.W.1 Dr. P.V. Sangada, Exh.12, (2) P.W.2 Bapubhai Motibhai, Exh.14, (3) P.W. 3, Hirabhai Rupabhai, Exh.15, (4) P.W.4, Ramchandra Motibhai, (5) P.W.5, Assistant Superintendent of Police, Mr. V.M. Parghi, Exh.22, and (6) P.W. 6, D.M. Parghi, at Exh.23. The prosecution produced documentary evidence consisting of inquest panchanama, panchanama of scene of offence, panchanama of recovery of clothes of the deceased, post-mortem notes, information lodged by the appellant at the police station, map of scene of offence, complaint lodged by PSI, Parghi, etc. to prove the case against the appellant.

4. After the recording of evidence of prosecution witnesses was over, the appellant was generally questioned by the learned Additional Sessions Judge and his statement under Section 313 of the Code of Criminal Procedure, 1973, was recorded. In his statement, the appellant denied to have committed any offence with which he was charged.

5. The learned Additional Sessions Judge, on overall appreciation of oral as well as documentary evidence, concluded that deceased Maniben was treated with cruelty by the appellant and the appellant had threatened her that he would kill her if she raises any objection against his illicit relation with the daughter of Laxman Bhema. The learned Additional Sessions Judge further

concluded that this being a case of circumstantial evidence, the prosecution has proved that the appellant and the appellant alone had committed murder of his wife, Maniben. It is further concluded by the learned Additional Sessions Judge that the appellant with a view to mislead the Investigating Agency had thrown the dead-body of Maniben in the well after she was strangulated to create evidence that the deceased had committed suicide by drowning herself in the well. In the ultimate decision, the learned Additional Sessions Judge convicted and sentenced the appellant as mentioned earlier, giving rise to filing of the present appeal by the appellant.

6. We have been taken through the entire evidence on the record by the learned counsel, Mr.P.J. Yagnik, and learned Additional Public Prosecution, Mr. K.G. Sheth.

7. It is an admitted fact that the entire case of the prosecution rests on circumstantial evidence. It is settled principle that in the case of circumstantial evidence, the circumstances must be established and the chain of evidence furnished by these circumstances should be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of people. The evidence of P.W. 2, Bapubhai Motibhai, Exh.14, reveals that his daughter, Maniben, was treated with cruelty by the appellant because he had illicit relation with the daughter of Laxman Bhema. As per the evidence of P.W.2, Bapubhai Motibhai, the appellant was beating Maniben on and off. It is deposed by the witness that because of cruelty meted out to her, Maniben used to come to her parents' house. The witness further deposed that, prior to 15 days of the date of incident, he had taken Maniben with him and left her in the matrimonial home, at Dahyapura. Evidence of P.W. 4, Ramchandra Moti, Exh.16, reveals that the relationship between the appellant and Maniben was not cordial and the appellant was threatening her that he would kill Maniben. The evidence of these two witnesses only indicates that the appellant was treating Maniben with cruelty as Maniben was raising objection against his illicit relation with the daughter of Laxman Bhema.

8. The next circumstance against the appellant is that he has tried to mislead the Investigating Agency by filing false information at Santrampur Police Station that his wife, Maniben, was missing since August 12, 1991. Learned APP, Mr. Sheth, has strongly relied upon this circumstance that by lodging false information, the

prosecution had suspected the conduct of the appellant which suggests that he had killed his wife, Maniben. In our opinion, this situation does not lead to the only conclusion that the appellant had strangulated deceased Maniben and had thrown her body in the well. It has come on record at the trial that the appellant was serving in a nursery and was staying at the nursery. The prosecution has not led any evidence that the appellant had returned from Nursery to his house and had strangulated the deceased and had thrown her dead body in the well.

9. As per the post-mortem notes and evidence of Dr.P.V.Sangada, P.W.1, the cause of death of deceased Maniben was asphyxia due to strangulation. In view of the evidence of Dr. P.V. Sangada, and post-mortem notes, the theory of suicide is ruled out. Even though it is a case of strangulation, the prosecution had not brought on the record any circumstantial evidence to indicate that the appellant had strangulated deceased Maniben. It is not brought on record that during the night of the incident the appellant was near the deceased Maniben and had caused her death. No other circumstance against the appellant was brought on the record to complete the chain of circumstantial evidence. The learned Additional Sessions Judge, without pointing out the whole chain of circumstances, in paragraph 20 of his judgment, concluded that the circumstantial evidence of the prosecution clearly establishes that the accused had alone committed murder of deceased Maniben and, thereafter, had thrown her dead body in the well. In our opinion, the prosecution had not led evidence pointing out guilt of the appellant by completing whole chain of circumstantial evidence. The cumulative effect of the circumstances must be such as to negative the innocence of the accused and to bring the offences home to prove him guilty beyond any reasonable doubt. In the present case, the prosecution has not brought offences home beyond any reasonable doubt by proving circumstances and establishing the chain of evidence furnished by the circumstances to leave any reasonable ground for a conclusion consistent with the guilt of the appellant. The chain of circumstances, which had been pointed out by the prosecution, does not establish guilt of the appellant. Each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is

possible. (See: 1997(2) GLR 1346: Tanviben Pankajkumar Divetia vs. State of Gujarat). When a case depends largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. In Tanviben's case (*supra*), the Supreme Court held as under: "The Court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof for some times, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions."

As indicated above, the prosecution case only raises suspicion against the appellant, but suspicion must be proved and it cannot take the place of proof. In our opinion, the circumstances established against the appellant do not complete the chain leading to only conclusion that the appellant had committed murder of deceased Maniben.

10. As a result of the foregoing discussion, the conviction of the appellant recorded by the learned Additional Sessions Judge under Sections 302 and 201 of the Indian Penal Code deserves to be quashed and set aside. The resultant effect is that the appeal deserves to be allowed and it is hereby allowed. The conviction and sentence imposed on the appellant by the learned Additional Sessions Judge, Godhra, at Panchmahals, in Sessions Case No.227 of 1991, for the offences under Sections 302 and 201 of the Indian Penal Code, is quashed and set aside. The fine, if any paid by the appellant, shall be refunded. The appellant is set at liberty if his presence is not required in connection with any other criminal case. Muddamal be destroyed as per the direction given in the impugned judgment and order.

(swamy)